

***Amendments to the Drawings***

Submitted herewith are four (4) sheets of Replacement drawings with Figures 1, 2, 3A, and 3B corresponding to the above-captioned application. The four (4) sheets of Replacement drawings are to replace the three (3) sheets of informal drawings for Figures 1-3 as filed on March 30, 2004. Identification of the drawings is provided in accordance with 37 C.F.R. § 1.84(c). Acknowledgment of the receipt, approval, and entry of these drawings into this application is respectfully requested.

***Remarks***

Reconsideration of this Application is respectfully requested.

Upon entry of the foregoing amendment, claims 1-21 and 24-34 are pending in the application, with claims 1 and 24 being the independent claims. Claims 1-21 and 24-34 are sought to be amended. Claims 22 and 23 are sought to be cancelled without prejudice to or disclaimer of the subject matter therein. Applicants reserve the right to prosecute similar or broader claims, with respect to the cancelled and/or amended claims, in the future. The Specification and Drawings are filed on March 30, 2004 are sought to be amended. These changes are believed to introduce no new matter, and their entry is respectfully requested.

The claims presented in this Application should be interpreted solely based on the file history of this Application, not the file history of any predecessor or related application. With respect to this application, the Applicants hereby rescind any and all disclaimers of claim scope made in any parent application(s), any predecessor application(s), and any related application(s). The Examiner is advised that any previous disclaimer of claim scope, if any, and the references that it was made to allegedly avoid, may need to be revisited. Nor should any previous disclaimer of claim scope, if any, in this Application be read back into any predecessor or related application.

Based on the above amendment and the following remarks, Applicants respectfully request that the Examiner reconsider all outstanding objections and rejections and that they be withdrawn.

***Objections to the Drawings***

The drawings are objected to for allegedly containing handwritten numbers.

According to the M.P.E.P.,

[a]ll drawings must be made by a process which will give them satisfactory reproduction characteristics. Every line, number, and letter must be durable, clean, black (except for color drawings), sufficiently dense and dark, and uniformly thick and well-defined. The weight of all lines and letters must be heavy enough to permit adequate reproduction.

(M.P.E.P. § 608.02.)

In this Application, the drawings filed on March 30, 2004 have satisfactory reproduction characteristics as evident in the published application. Each of the handwritten reference characters in these drawings is clearly legible. Applicants are unaware of any specific requirement that handwritten numbers, as long as they have satisfactory reproduction characteristics, are not acceptable in patent applications. If the Examiner believes otherwise, Applicants respectfully requests the Examiner to demonstrate such requirement on the record in the next communication or remove this objection to the drawings.

FIG. 1 and FIG. 3 additionally stand objected to for allegedly containing unlabeled elements that should be provided with descriptive text labels. Without acquiescing to the merits of this allegation and for the sole purpose of expediting prosecution of this Application, Applicants submitted herewith four (4) sheets of Replacement drawings to replace the three (3) sheets of informal drawings for Figures 1-3 as filed on March 30, 2004. Applicants have separated the flow chart that was originally shown in FIG. 3 into FIG. 3A and FIG. 3B. Accordingly, Applicants respectfully request this objection to FIG. 1 and FIG. 3 be reconsidered and withdrawn.

***Objections to the Specification***

The Specification stands objected to because of various alleged informalities. In particular, the Examiner objects to the Specification as filed on March 30, 2004 because it allegedly includes words and/or phrases that are not in American English. (Office Action, pp. 3-4.) According to 37 C.F.R. § 1.52(b)(1)(ii), the application must "be in the English language or be accompanied by a translation of the application and a translation of any corrections or amendments into the English language together with a statement that the translation is accurate." The M.P.E.P. notes that 37 C.F.R. § 1.52 only requires that the application be in the English language; there is no additional requirement that the English must be American English. (M.P.E.P § 608.01.) The word "initializing," as well as the other words objected to by the Examiner, are in the English language. In this situation, the Examiner should not object to the specification and/or claims in patent applications merely because Applicants are using non-American English spellings. (M.P.E.P § 608.01.) Accordingly, Applicants respectfully request this objection to the Specification be reconsidered and withdrawn.

***Objections to the Claims***

**Claims 11, 30, 21, and 34**

Claims 11, 30, 21, and 34 stand objected to because of various alleged informalities. In particular, the Examiner objects to these claims because they allegedly include words and/or phrases that are not in American English. (Office Action, pp. 3-4.) According to 37 C.F.R. § 1.52(b)(1)(ii), the application must "be in the English language or be accompanied by a translation of the application and a translation of any corrections

or amendments into the English language together with a statement that the translation is accurate." The M.P.E.P. notes that 37 C.F.R. § 1.52 only requires that the application be in the English language; there is no additional requirement that the English must be American English. (M.P.E.P § 608.01.) The word "initializing," as well the other words objected to by the Examiner, are in the English language. In this situation, the Examiner should not object to the specification and/or claims in patent applications merely because Applicants are using non-American English spellings. (M.P.E.P § 608.01.) Accordingly, Applicants respectfully request this objection to claims 11, 30, 21, and 34 be reconsidered and withdrawn.

***Rejections under 35 U.S.C. § 103***

Claims 1, 2, 4, 5, 7-11, 22-25, and 27-30

Claims 1, 2, 4, 5, 7-11, 22-25, and 27-30 stand rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over the United States Patent No. 6,650,658 to Mueller et al. ("Mueller") in view of United States Patent No. 6,535,505 to Johnson et al. ("Johnson"). Applicants respectfully traverse the rejection and provide the following arguments to support patentability.

This Application discloses determining a resultant mode of operation for two modems from a set of possible modes of operation by narrowing down process. More specifically, the two modems, such as a central xDSL modem and a remote xDSL modem to provide an example, perform a handshaking procedure to exchange information about their respective capabilities to derive a set of common modes of operation. (Specification, p. 15, lines 5-13.) The "set of common modes of operation

comprises all the protocol standards and annexes that are supported" by both of the modems. (Specification, p. 15, lines 13-15.) These common modes of operation, referred to as the set of possible modes of operation, can be used for data transmission between the two modems; however, this Application narrows down the possible modes of operation to derive a set of favorable modes of operation. (Specification, p. 15, line 27 - p. 16, line 7.) For example, this Application may discard possible modes of operation from the possible modes of operation that may be contrary to restrictions imposed by regulatory authorities. (Specification, p. 15, line 27 - p. 16, line 7.) Assuming that two or more favorable modes of operations exist, this Application then uses a probing based selection to further narrow down the set of favorable modes of operation to determine the resultant mode. (Specification, p. 16, lines 9 - p. 20, line 12.)

To expedite prosecution of this Application, Applicants have amended independent claim 1 to further clarify at least the feature of "*the set of possible modes of operation.*" More specifically, Applicants have amended independent claim 1 to recite at least the feature of "*the set of possible modes of operation [include] protocol standards and annexes that are supported by the at least two modems.*"

#### Mueller

Mueller discloses probing frequency bands of operation between two modems to determine a mutual spectrum of operation. More specifically, Mueller discloses a common handshake protocol, G.hs, which may be used for capabilities exchanged between all DSL modems. (Mueller, 1: 36-39.) The common handshake protocol G.hs "will define how modem connections can be initiated, modem capabilities exchanged,

and a final modem configuration negotiated." (Mueller, 1: 49-52.) According to Mueller, "G.hn is a physical layer and messaging protocol specification used to establish a connection and negotiate a common mode of operation between two modems at either end of a subscriber line without any a priori knowledge of the capabilities of each end." (Mueller, 1: 60-64.) As a result, "any device capable of operation in different frequency bands would encounter difficulties in the initial contact with other devices." (Mueller, 2: 4-6.) To overcome this problem, Mueller discloses "probing each of the bands at the transmitter and receiver, either in serial or parallel, to determine a mutual spectrum." (Mueller, 2: 23-25.) Nowhere does Mueller teach or suggest that this mutual spectrum information includes "*protocol standards and annexes that are supported by*" the two modems of Mueller as recited by independent claim 1. In other words, the possible modes of operation of the modems in Mueller relate to frequency bands of operation, whereas the set of possible modes of operation of independent claim 1 include "*protocol standards and annexes that are supported by the at least two modems.*"

Therefore, Mueller does not teach or suggest at least the feature of "*performing a handshake procedure to determine a set of possible modes of operation supported by the at least two modems, the set of possible modes of operation including protocol standards and annexes that are supported by the at least two modems*" as recited by independent claim 1. Independent claim 24 recites a substantially similar feature that is likewise not taught or suggested by Mueller. Johnson does not teach or suggest these missing features of these independent claims nor does the Office Action so allege, therefore the combination of Mueller and Johnson does not render independent claims 1 and 24 obvious. Dependent claims 2, 4, 5, 7-11, 25, and 27-30 are likewise not rendered

obvious by the combination of Mueller and Johnson for the same reasons as the independent claims from which they respectively depend and further in view of their own respective features. Without acquiescing to the merits of this allegation, Applicants have cancelled claims 22 and 23 without prejudice to or disclaimer of the subject matter therein. Applicants contend that the canceling of claims 22 and 23 does not give rise to any implication regarding whether Applicants agree with or acquiesce to this rejection. Accordingly, Applicants respectfully request that the rejection of claims 1, 2, 4, 5, 7-11, 24, 25, and 27-30 under 35 U.S.C. § 103(a) be reconsidered and withdrawn.

Claims 3, 6, 12-21, 26, and 32-34

Claims 3, 6, 12-21, 26, and 32-34 stand rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Mueller in view of Johnson and further in view one or more of the following:

ITU-T Recommendation G.992.3 ("ITU-T");  
United States Patent No. 7,027,405 to Khadavi et al. ("Khadavi");  
United States Patent No. 7,391,780 to Stone et al. ("Stone"); and  
United States Patent No. 6,396,531 to Gerszberg et al. ("Gerszberg").

Applicants respectfully traverse the rejection and provide the following arguments to support patentability.

As discussed above, the combination of Mueller and Johnson does not teach or suggest each and every feature of independent claims 1 and 24. ITU-T, Khadavi, Stone, and Gerszberg alone or any combination thereof, does not provide the missing teachings or suggestions with respect to these independent claims nor does the Office Action so allege. Therefore, the combination of Mueller, Johnson, and one or more of ITU-T, Khadavi, Stone, and Gerszberg does not render independent claims 1 and 24 obvious.



Dependent claims 3, 6, 12-21, 26, and 32-34 are likewise not rendered obvious by the combination of Mueller, Johnson, and one or more of ITU-T, Khadavi, Stone, and Gerszberg for the same reasons as the independent claims from which they respectively depend and further in view of their own respective features. Accordingly, Applicants respectfully request that the rejection of claims 3, 6, 12-21, 26, and 32-34 under 35 U.S.C. § 103(a) be reconsidered and withdrawn.

***Conclusion***

All of the stated grounds of objection and rejection have been properly traversed, accommodated, or rendered moot. Applicants therefore respectfully request that the Examiner reconsider all presently outstanding objections and rejections and that they be withdrawn. Applicants believe that a full and complete reply has been made to the outstanding Office Action and, as such, the present application is in condition for allowance. If the Examiner believes, for any reason, that personal communication will expedite prosecution of this application, the Examiner is invited to telephone the undersigned at the number provided.

Prompt and favorable consideration of this Amendment and Reply is respectfully requested.

Respectfully submitted,

STERNE, KESSLER, GOLDSTEIN & FOX P.L.L.C.



Michael R. Malek  
Attorney for Applicants  
Registration No. 65,211

Date: 03/19/10

1100 New York Avenue, N.W.  
Washington, D.C. 20005-3934  
(202) 371-2600  
109098o\_1.DOC

***Appendix A: Replacement Drawings***